Supreme Court, U.S.
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No. 78-378

In the Supreme Court of the United States

OCTOBER TERM, 1978

ST. ELIZABETH'S HOSPITAL OF BOSTON, PETITIONER

v.

STEPHEN M. WEINER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
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Washington, D.C. 20530

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Petitioner contends that a plan adopted by the Massachusetts Rate Setting Commission—and approved by the Secretary of Health, Education, and Welfare—for the reimbursement of hospitals providing inpatient care under the Medicaid Act, 42 U.S.C. (and Supp. V) 1396 *et seq.*, does not reimburse it for "reasonable costs" of inpatient services, as required by 42 U.S.C. (Supp. V) 1396a(a)(13)(D), because the plan allegedly will not reimburse petitioner for its actual costs.

1. Under the Medicaid program the states reimburse providers of inpatient hospital services for "the reasonable cost of inpatient hospital services provided * * * as determined in accordance with methods and standards * * * which shall be developed by the State and reviewed

and approved by the Secretary * * *." 42 U.S.C. (Supp. V) 1396a(a)(13)(D). The states, in turn, are reimbursed by the federal government for a portion of the expenses incurred by the states. 42 U.S.C. 1396b.

Pursuant to Section 1396a, and in accordance with regulations promulgated by the Secretary, the Massachusetts Rate Setting Commission established a plan of prospective reimbursement that provides that all inpatient hospital care for Medicaid patients will be reimbursed by an all-inclusive per diem payment (Pet. App. 15a, 48a-69a). The state plan was approved by the Secretary in December 1973 (Pet. App. 16a). The plan includes a formula for calculating reimbursement by dividing a hospital's base year costs for all inpatients by its allowed number of base year inpatient days and adding an inflation factor (Pet. App. 16a, 50a-52a). The Commission's purpose was to establish "a method [that] will produce fair reasonable and adequate rates of payment that will promote increasing efficiencies in the operations of providers covered hereunder" (Pet. App. 49a).

2. Petitioner contends (Pet. 11) that the state plan does not provide reimbursement for "reasonable costs," and thus is contrary to 42 U.S.C. (Supp. V) 1396a(a)(13)(D), because petitioner allegedly "is not being reimbursed for its actual cost of furnishing quality and necessary inpatient care to [Medicaid patients] on an efficient and economic basis * * *."[1] Petitioner cites no authority for

[1]Although petitioner, in listing six questions allegedly presented (Pet. 3-4), states that contention in various ways, its basic argument (Pet. 10-13) is that under the statute the term "reasonable costs" is synonymous with "actual costs," whatever the actual costs may be. Petitioner does not attempt to show how its actual costs are reasonable and does not claim that the formula employed in the state plan precludes reimbursement of any category of reasonable costs.

While petitioner also presents as a question (Pet. 3) whether the state plan deprives petitioner of due process, it does not discuss that question, and any such contention would be insubstantial.

the proposition that the term "reasonable costs" is synonymous with "actual costs," and they are plainly not synonymous. Some actual costs may be unnecessary or wasteful, and hence not "reasonable." Indeed, as the court of appeals noted (Pet. App. 17a), Congress in 1972 amended Section 1396a(a)(13)(D) to make clear that states are not required to provide reimbursement on the basis of costs actually incurred.[2] Pub. L. No. 92-603, Sections 221(c)(5) and 232(a), 86 Stat. 1389, 1410. The Secretary's regulations have so construed the amended statute, since they permit states to adopt reimbursement plans that do not require reimbursement for actual costs (Pet. App. 17a-18a). The Secretary's construction of the statute is sufficiently reasonable "to be accepted by a reviewing court." *Zenith Radio Corp.* v. *United States*, No. 77-539 (June 21, 1978), slip op. 7; see also *Quern* v. *Mandley*, No. 77-1159 (June 6, 1978), slip op. 13.[3]

[2]Before its amendment, Section 1396a(a)(13)(D) merely required that state plans provide "payment of the reasonable cost (as determined in accordance with standards approved by the Secretary and included in the plan) of inpatient hospital services * * *." Under that provision, the Secretary had established standards that required reimbursement of actual costs (Pet. App. 17a). The statute was then amended to permit the states to select different standards for determining reasonable costs, and the Secretary's regulations were changed accordingly.

[3]Petitioner also argues (Pet. 10) that Section 222 of Pub. L. No. 92-603, 86 Stat. 1390, prohibits the Secretary from authorizing a state to adopt a prospective reimbursement system. Section 222, however, deals only with experiments and demonstration projects; it is not applicable here. The Secretary's authority to approve the alternate plan developed by the state in this case is based on 42 U.S.C. (Supp. V) 1396a(a)(13)(D) and 42 U.S.C. 1396a(b).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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